Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SYLVIA QUINTERO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

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PETITION FOR WRIT OF CERTIORARI

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May 7, 2004

QUESTION PRESENTED FOR REVIEW

The Defendant in this case and the Government signed a plea agreement that is part of the autos in this case. In it the Defendant waived her right to appeal any sentence imposed within the maximum provided in the statute conviction. She agreed not to attack the guilty plea nor the sentencing imposed, clearly she did not waive the right to attack the way the sentence was going to be served.

Based upon this the Defendant clearly qualified for probation or in home detention and the sentence imposed being at a level that made her qualified for those alternatives; the Honorable Judge acted "ultra vires", because there was no substantial evidence to substantiate the exercise of discretion by imposing a term in jail. The Court erred in denying the Defendant's verbal and written motion requesting the Court to allow her to serve the term of 6 months with a probated sentence or in home detention.

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the court below were defendant-petitioner **SYLVIA QUINTERO**, who appeared before the **HONORABLE WILLIAM WAYNE JUSTICE** District Court Judge for the Western District of Texas, Del Rio Division. **ROBERT CADENA**, Assistant U.S. Attorney, Western District of Texas, represented appellee in the District Court proceedings. **JUAN LUIS BURGOS-GANDIA** is the Counsel who represented appellant on appeal.

Respondent, the United States of America, is represented by **JOSEPH H. GAY, JR.**, Assistant United States Attorney for the Western District of Texas.

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IN THE

SUPREME COURT OF THE UNITED STATES

SYLVIA QUINTERO,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Court of Appeals filed February 10, 2004 in which they reaffirm the decision of the District Court in the imposition of time in jail instead of probation or home detention.

OPINIONS BELOW

The memorandum of opinion of the Court of Appeals is captioned **United States v. Sylvia Quintero,** No. 03-50708 (5th Cir. February 10, 2004). The opinion of the Court of Appeals is attached as Appendix A.

JURISDICTION

The judgment and opinion of the Court of Appeals were filed on February 10, 2004 (see appendix A). This Court's jurisdiction is invoked under Title 28, United States Code, §1254(1).

The United States District Court, Western District of Texas, Del Rio Division, exercised jurisdiction pursuant to Title 8, United States Code §1324. The United States Court of Appeals for the Fifth Circuit had jurisdiction pursuant to Title 18, United States Code §3742.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The questions presented in this petition require consideration and application of the Amendment V and Amendment VIII to the United States Constitution to the extent that imposition of time in jail considering the specific

circumstances in this case could be considered cruel and unusual punishment.

STATEMENT OF THE CASE

A. Proceedings Below

On February 19, 2003 an indictment was filed against the appellant, Sylvia Quintero, being charged with a violation of Title 8 USC Section 1324(a)(1)(A)(ii)&(B)(i) and Title 18 USC Section 2. The indictment was a 2 count indictment under the Sections mentioned before.

On March 20, 2003 Sylvia Quintero pleaded guilty to the indictment that was filed and she was sentenced to a level 6 as defined by the Sentencing Guidelines to six (6) months of imprisonment.

B. Statement of the Facts

The Defendant, Sylvia Quintero, pleaded guilty and was sentenced for a violation to count 1 of the indictment after signing a plea agreement and the statement of facts which we have referenced before in this writ.

The Honorable Judge sentenced the Defendant, Ms. Quintero, to six (6) months of imprisonment after considering the

sentencing range provided in the Guidelines of 0-6 months of imprisonment.

REASONS FOR GRANTING THE WRIT

The Defendant, Sylvia Quintero, was sentenced under the sentencing guidelines to a level 6, criminal history 1 which carries with it a minimum and a maximum sentence of 0-6 months of imprisonment. Sylvia Quintero was sentenced to six (6) months of imprisonment. Title 28 U.S.C.§994(j) directed the Sentencing Commission to insure the guidelines reflect the general appropriateness if imposing a sentence other than imprisonment in cases where the defendant is a first-time, non-violent, non-serious offender. The commitment order issued by the Honorable Judge of six (6) months of imprisonment is not justified by the record in this case nor by the facts in this case, so the Defendant should have received the benefit of the sentence of probation or in the worst case scenario in home detention.

As a predicate to said conclusion we provided the Court with the following grounds:

a) The total offense level of 6 and criminal history category of 1 is clearly within zone A of the

Sentencing Guidelines. For zone B to apply it would be necessary for the Defendant to have a criminal history points of 4,5,6 which clearly are not present in Mrs. Quintero's case.

b) Mrs. Quintero is a single mother, an American Citizen who at the present time is working for NEC America and she is the sole provider for her children, among them, Angelica Maria who continues to live with the Defendant. Mrs. Quintero suffers of high blood pressure and underwent a hysterectomy three (3) years ago. Mrs. Quintero belongs to a close knit family, and it would be devastating to her, her children and her family for her to be placed in jail for six (6) months.

c) The vehicle that was involved in the conspiracy did not belong to Mrs. Quintero, it belongs to the other co-defendant, and Mrs. Quintero was just a passenger in the vehicle.

d) The alien that was transported with the vehicle was not related to Ms. Quintero, he was the nephew of the other co-defendant.

e) We believe that Ms. Quintero had no other choice but to ride the vehicle, otherwise she would have had to get out of the vehicle and remain stranded where she was.

The Assistant US Attorney accepted the facts as articulated by the Defendant's Counsel and furthermore stated that Mrs. Quintero did not receive financial benefit or gain for the transaction.

For the reasons mentioned above we understand that Ms. Quintero should be considered for a sentence of probation because no purpose is served by committing Ms. Quintero to six (6) months of imprisonment when others in similar or worst circumstances would be eligible for probation or in home detention.

Furthermore, in determining to impose a term of probation, the Court is to consider the factors set forth in 18U.S.C.§3553(a)[1]. Among those factors exists the need to avoid unwarranted sentence, disparities among defendants with similar record who have been found guilty of similar conduct.

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[1] The other factors contemplated in Section 3553(a) of Title 18 are inapplicable in this case. Ms. Quintero's criminal history category is 1 and her participation as we have mentioned was not significant in this case.

To allow the term of imprisonment to stand in this case for reasons mentioned would be contrary to law and justice[2].

CONCLUSION

Amendment V states that no one should be deprived of life, liberty or property without due process of the law and Amendment VIII states that no cruel and unusual punishment should be inflicted. In this case the Defendant was sentenced to 6 months in jail and the Honorable Judge did not have any substantiation for not granting her the possibility of serving said time through a probated sentence. For this reason we understand that if the defendant is required to serve her time in jail she would be illegally deprived of liberty, and the punishment would be cruel and unusual because other offenders in similar circumstances would be eligible for a probated sentence. It is worth mentioning that the Defendant served almost one year in probation.

WHEREFORE we respectfully request this Honorable Supreme Court of the United States to grant the matters that we have herein before requested by allowing the Defendant in this

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[2] Mrs. Quintero has been periodically (every month) interviewed by the probation officer and has complied with all the requirements and conditions imposed on her since the date of the sentence, June 11, 2003.

case to serve her time with a probated sentence or in home detention and for these same reasons a writ of certiorari should be issued to review the District Court judgment and the opinion of the United States Court of Appeals for the Fifth Circuit in this matter.

Respectfully submitted,

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Filed February 10, 2004

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50708

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SYLVIA QUINTERO,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that Appellee's motion to dismiss appeal is GRANTED. Defendant's counsel is cautioned in the future to brief such waiver of appeal issues, including why the waiver is not valid.

IT IS FURTHER ORDERED that Appellee's alternative motion for an extension of time of 14 days from the denial of the motion to dismiss to file Appellee's brief is denied as moot.